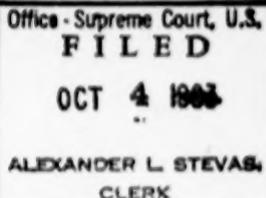


83-564



IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1983

No. _____

C. Dula Hawkins, Et Al.

Petitioners

versus

Jno. McCall Coal Export Corp.

Respondents

Appendix To
Petition For A Writ Of Certiorari To The
United States Court of Appeals for
The Fourth Circuit

Hamrick and Hamrick
J. Nat Hamrick, Esq.
312 N. Main Street
Rutherfordton, NC 28139
704-287-3359
Counsel for Petitioner

IN THE
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IN THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NO. 82-1402

C. DULA HAWKINS, ET AL.,

Appellants

v.

JNO. McCALL COAL EXPORT CORP., ET AL.,

Appellees

Appeal from the United States District
Court for the District of Maryland

(Norman P. Ramsey, Judge)

MOTION FOR SUSPENSION OF RULES FOR A GOOD
CAUSE BY ADDING TO THE RECORD ORDER OF
THE CHILDREN'S COURT OF BUENOS AIRES,
ARGENTINA AND BRIEF IN SUPPORT OF

J. Nat Hamrick
Hamrick & Hamrick
P.O. Drawer 470
Rutherfordton, NC
28139
704-287-3359
Counsel for Appel-
lants

No comes J. Nat Hamrick, counsel for Appellants in the above captioned matter and moves pursuant to Rule 2 of the Federal Rules of Appellate Procedure, for a suspension of the rules for good cause shown and the addition to the record of a certified authenticated copy of the proceedings in the Children's Court in Buenos Aires, Argentina allowing Ana Maria Aulet Garcia to intervene for her minor daughter, Maria Forencia Villa Aulet, in the above captioned case. The good cause shown is as follows: The United States Court for the district of Maryland entered an Order dismissing this case for the reason that the Argentine minor should but could not be joined.
(Appellants appendix page 43.)

The minor's mother, Ana Maria Aulet Garcia, had a proceeding pending in Argentina for some time seeking permission from the Argentine minor's court to

allow her to intervene in this action on behalf of her minor daughter. This order has now been entered and a certified authenticated copy is attached to this motion. However, the order was not entered at the time the case was heard in the district court of Maryland and had not been entered at the time the case was argued before this honorable court. However, since this has been accomplished and the minor's mother has been authorized to intervene in her behalf in this action the plaintiff respectfully moves the court that the order of the Argentine court be added to the record and respectfully shows to the court that when it is added to the record all necessary persons will be parties to this action.

In view of the entry of the order by the Argentine court it is respectfully submitted that the question before this court is "moot" and plaintiffs re-

spectfully suggest that the matter be
sent back to the district court for
trial.

This 17th day of February, 1983.

/s/ J. Nat Hamrick

J. Nat Hamrick
HAMRICK & HAMRICK
P.O. Drawer 470
Rutherfordton, NC 28139
704-287-3359

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 82-1402

C. DULA HAWKINS, ET AL.,
APPELLANTS

v.

JNO. McCALL COAL EXPORT CORP., ET AL.,
APPELLEES

APPEAL FROM THE UNITED STATE DISTRICT
COURT FOR THE DISTRICT OF
MARYLAND

(NORMAN P. RAMSEY, JUDGE)

MOTION TO AMEND APPELLANTS' MOTION FOR
SUSPENSION OF RULES

I feel compelled to file this amendment because Appellees in their Response to Appellants' Motion for Suspension of Rules, state on page two, line fourteen that Appellants had taken no formal

action to join the interest of the Villa estate until September 8, 1982.

This statement is not correct, as counsel for Appellees undoubtedly knew, because prior to December 21, 1981 their retained counsel, Dr. Manual J. F. Ordonez, in Argentina was present in the Argentine courts attempting to prevent the joinder while counsel for the Appellees were present in the United States District Court for the District of Maryland insisting that the joinder was necessary and if it was not accomplished that the case should be dismissed. This is shown by a letter directed to counsel for Appellants by Ana Maria Aulet Garcia, mother of the minor, dated December 21, 1981 (Exhibit A) stating that Dr. Ordonez (McCall lawyer) was present in the court before that time attempting to prevent her joinder. This letter on paragraph five also shows that she needed a legaliza-

tion of the McCall letter which counsel for Appellees had refused to have notarized and which counsel for Appellants had moved the Court for an order compelling them to have said letter notarized. (to the end that it could be sent to the Argentine Court) (Appellees Appendix page 77). Exhibit B is a letter addressed to the counsel for Appellants from Ana Maria Aulet Garcia dated September 2, 1981 which states that she had had a consultation with the assessor of minors asking to represent her daughter. A letter from Ana Maria Aulet Garcia to counsel for Appellants dated October 7, 1981 (Exhibit C) saying that she had placed before the assessor of minors the request to intervene, which letter also says she needs a certified copy of the McCall contract.

I must call the court's attention to the last paragraph of her letter dated

December 21, 1981 which reads as follows: "This would have been possible much sooner but for the case against it mounted by Dr. Ordonez which prejudiced my case."

Respectfully submitted.

March 21, 1983.

/s/ J. Nat Hamrick
J. Nat Hamrick
HAMRICK & HAMRICK
P.O. Drawer 470
Rutherfordton, NC 28139
704-287-3359
attorney for Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of March, 1983, two copies of the foregoing Appellant's Motion to Amend Appellants' Motion for Suspension of Rules were mailed, postage prepaid, to Cable, McDaniel, Bowie and Bond, 900 Blaustein Building, One North Charles Street, Baltimore, Maryland 21201, attorney for Appellees.

/s/ J. Nat Hamrick
J. Nat Hamrick

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 82-1042

C. Dula Hawkins, Jr. Nat
Hamrick, Jr., Ana Marie
Aulet Garcia de Villa,
guardian for Maria
Florencia Villa Aulet, Appellants,

versus

JNO McCall Coal Export
Corporation, JNO McCall
Coal Company, Inc., Appellees.

Appeal from the United States District
Court for the District of Maryland, at
Baltimore. Norman P. Ramsey, District
Judge.

Upon consideration of appellants'
motion to expand the record;

IT IS ORDERED that the motion is
denied.

Entered at the direction of Judge
Sprouse with the concurrence of Judge

Hall and Judge Murnaghan.

FOR THE COURT,

William K. Slate, II
Clerk

F I L E D
April 11 1983

U.S. Court of Appeals
Fourth Circuit

UNITED STATES COURT OF APPEAL
for the Fourth Circuit

No. 82-1402

C. Dula Hawkins, Jr. Nat
Hamrick, Jr., Ana Marie
Aulet Garcia de Villa,
guardian for Maria
Florencia Villa Aulet,

Appellants,

v.

JNO McCall Coal Export
Corporation, JNO McCall
Coal Company, Inc.,

Appellees.

Appeal from the United States District
Court for the District of Maryland, at
Baltimore. Norman P. Ramsey, District
Judge.

Argued: January 13, 1983

Decided: May 31, 1983

Before HALL, MARGAGHAN and SPROUSE, Cir-
cuit Judges.

J. Nat Hamrick (Hamrick & Hamrick; Andrew
J. Graham, Kramon & Graham, P.A. on brief)
for Appellants; Ray R. Fidler (Morton A.
Sacks, Thomas L. Crowe, Cable, McDaniel,
Bowie & Bond on Brief) for Appellees.

PER CURIAM:

C. Dula Hawkins and J. Nat Hamrick, Jr. (the plaintiffs) appeal from the district court's dismissal of their contract action against JNO McCall COal Export Corporation and JNO McCall Coal Company (McCall). The district court's dismissal erroneously was based on Federal Rule Civil Procedure 19(b). Since, however, the dismissal properly could have been grounded on Federal Rule Civil Procedure 41(b), we affirm.

The complaint below alleged an oral contract in which McCall promised to use the services of a five-person joint venture (which included the plaintiffs) to sell coal to a government-owned steel-making corporation in Argentina. The complaint further alleged that McCall violated the contract and sold coal directly to the Argentine company, failing to pay plaintiffs' their commissions. This appeal,

however, involves procedural issues, rather than substantive contract issues.

The five members of the joint venture included the plaintiffs, Petersen Enterprises, Inc., Ruben Antonio and Juan Carlos Villa. Villa, an Argentine citizen, died prior to the commencement of this action and his sole heir was a minor daughter, Maria, who is also a citizen of Argentina. The plaintiffs did not refer to these other members in either their original or amended complaint. After depositions revealed their participation, however, McCall moved for a Rule 19 dismissal, asserting that all five members were necessary and indispensable parties. McCall moved, in the alternative, for an order requiring plaintiffs to join the absent join venturers. The plaintiffs thereafter secure assignments from Antonio and Petersen of their interests in the joint venture.

On December 15, 1980, the district

court gave the plaintiffs 45 days either to secure an assignment from the Villa heir or to join her. The court subsequently granted two extensions of its order upon assurances from the plaintiffs that they would comply with it. The court granted the second extension after plaintiffs' counsel stated in a letter to the court that an assignment of the Villa interest had been executed and would be forthcoming. The plaintiffs, however, never filed such an agreement.

On September 17, 1981, the plaintiffs moved to add Maria Villa's mother as a party plaintiff. The motion asserted that the mother "is the legal guardian of Mr. Villa's minor daughter. The has appointed the undersigned to represent in this litigation whatever interests in the litigation of the late Mr. Villa had." The plaintiffs filed with this motion a copy of the alleged appointment, pur-

portedly signed by Mrs. Villa. On July 31, 1981, however, McCall filed authenticated documents from Argentina which revealed that (1) Villa's widow had not authorized anyone to represent the interests of the Villa estate in the litigation, and (2) such authorization required approval from the appropriate Argentine court. Subsequently, plaintiffs' then lead counsel, Robert Seefried, withdrew as counsel and plaintiffs' current counsel, J. Nat Hamrick, Sr., assumed the role of lead counsel.

At a status conference held on November 24, 1981, the district court advised the plaintiffs that their failure to join the necessary parties^{1/} had caused undue delay. The court nevertheless

^{1/} In addition to Villa's heir, these parties included Antonio and Petersen, who by November 1981, had rescinded their assignments. Plaintiffs then moved the court to join Antonio and Petersen as party plaintiffs. The court denied this motion as moot in its dismissal order.

allowed plaintiffs an additional fifteen days to effect appropriate joinder. The court twice extended this deadline. During that period, the plaintiffs moved the court to appoint an associate in the law firm of plaintiffs' local counsel as guardian ad litem for Villa's heir, to act as a representative party plaintiff. The plaintiffs also filed a motion seeking to compel the president of McCall to authenticate a letter allegedly necessary to assert joinder of the representative of the Villa interest.

The district court denied these motions and dismissed the entire complaint on April 12, 1982. In its dismissal order, the court stated that the Villa heir was an indispensable party. It further found that her joinder was not feasible, principally because the court lacked in personam jurisdiction over her. The court then weighed the factors mandated by Rule 19(b)

and in exercie of its discretion granted McCall's motion to dismiss.

We think the district court incorrectly assumed that it did not have in personam jurisdiction over the Villa heir. The Maryland long-arm statute provides the requisite basis for in personam jurisdiction under the facts of this case.

Md. Cts. & Jud. Proc. Code Ann. § 6-103 (b)(1) (Rep. Vol. 1980). See also Md. R.P. 107(a)(4) (Rep. Vol. 1977); Fed. R. Civ. P. 4(3), (i)(1).

Although, as we have indicated, joinder was feasible, the plaintiffs failed to comply with the court's order to effect joinder for a period of fifteen months. This failure provided the court with adequate grounds to dismiss the complaint under Federal Rule Civil Procedure 41(b). That rule provides in pertinent part: "For failure of the plaintiff to prosecute or to comply with these rules

or any order of court, a defendant may move for dismissal of an action or of any claim against him." The failure of a plaintiff to join a party after the court rules that it is an indispensable party may result in dismissal of the plaintiffs' action for failure to prosecute under Rule 41(b). See English v. Seaboard Coast Line Railroad Co., 465 F.2D 43, 47-48 (5th Cir. 1972); Transit Casualty Co. v. Security Trust Co., 396 F.2d 803 (5th Cir. 1968). The district court had more than ample reason to find a failure to prosecute under the facts of this case. In addition to the inordinate delay, the district court was misled by the assurance of plaintiffs' counsel that an assignment from Villa's estate had been procured and by the subsequent misrepresentation to the court that Mrs. Villa authorized counsel to represent the Villa interests in the case.

We have reviewed plaintiffs' other two assignments of error and find no merit in them. The judgement of the district court therefore is affirmed.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 82-1402

C. Dula Hawkins, et al,
Appellants,
versus

JNO McCall Coal Export
Corporation, et al,
Appellees.

O R D E R

Upon consideration of the appellants' petition for rehearing and suggestion for rehearing en banc, and no judge having requested a poll on the suggestion for rehearing en banc,

It is ADJUDGED and ORDERED that the petition for rehearing is denied.

Entered at the direction of Judge Sprouse for a panel consisting of Judge Hall, Judge Murnaghan, and Judge Sprouse.

FOR THE COURT,

FILED
JULY 6, 1983
U.S. Court of Appeals
Fourth Circuit

/e/ William K. Slate

CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

C. DULA HAWKINS, ET AL.,)
Plaintiffs,) CIVIL
v.) ACTION
JNO. MCCALL COAL EXPORT CORP.) NO.
ET AL.,) R-80-774
Defendants.)

MEMORANDUM AND ORDER

This suit arises out of an alleged breach of a verbal agreement by five members of a joint venture or partnership -- two of whom are plaintiffs, C. Dula Hawkins ("Hawkins") and J. Nat Hamrick, Jr. ("Hamrick") -- and defendants. The venture allegedly was in connection with certain proposed coal transactions. Although the amended complaint contains three counts, the same transaction is common to each count. In November, 1980, defendants filed a motion to dismiss the amended complaint

for failure to join necessary and indispensable parties, namely Petersen Enterprises, Inc. ("Petersen"), Ruben Antonio ("Antonio"), and the representative of the estate of one of the deceased venturers, Juan Carlos Villa ("Villa"). Plaintiffs purportedly secured assignments from Antonio and Petersen and at the hearing held on December 15, 1980, the Court reserved ruling and afforded plaintiffs a period of forty-five (45) days in which to secure an assignment from the successor to the Villa interest. This period was twice extended at plaintiffs' request, the second extension coming after plaintiff Hamrick informed counsel that the assignment had in fact been executed and was in the mail. On April 20, 1981, a motion to add Villa's widow (Ana Maria Aultet Garcia) as a party plaintiff was filed, but on July 31, 1981, authenticated documents from Argentina were filed which revealed that (1) Villa's widow

had not inherited his estate -- a minor daughter (Maria Florencia Villa de Aulet) -- being the apparent beneficiary, (2) Villa's widow had not given her authorization for anyone to represent the interests of the Villa estate in this litigation, and (3) judicial approval for any such authorization from the Argentine court would be required. Subsequently, plaintiffs' then lead counsel, Robert Seefried, withdrew this appearance and that plaintiffs' current counsel, J. Nat Hamrick, Sr., was entered.

In September and October, 1981, Antonio and Roland Petersen were deposed at which time they informed counsel for defendants that the assignments of their interests had been rescinded and they intended to join as parties plaintiff. At the status conference held on November 24, 1981, the Court expressed the view that plaintiffs failure to accomplish joinder of the necessary parties had occasioned

undue delay in this case. Plaintiffs were nevertheless allowed fifteen days to achieve the joinder they believed necessary. On November 30, 1981, a motion to join Petersen and Antonio as parties-plaintiff was filed. The Court indicated that it would not rule on the motion for joinder until plaintiffs had accomplished the joinder of all necessary parties. At the request of counsel for plaintiffs, the fifteen day dealine for obtaining complete joinder was twice extended. As of this date plaintiffs have not moved to join the representative of the Villa estate as a party plaintiff. Plaintiffs have, however, filed other motions in its stead; which motions now have been fully briefed by plaintiffs and defendants. Currently open and ready for decision are the following motions:

1. Defendants Motion to Dismiss Amended Complaint for Failure to Join Necessary and Indispensible Parties.

2. Plaintiffs' Motion to Add Additional Parties Plaintiff.
3. Plaintiffs' Motion to Appoint Guardian.
4. Plaintiffs' Motion to Compel Authentication of Document.

The Court rules pursuant to Local Rule 6 seeing no need for further argument.

The initial question is whether the representative of the Villa estate is an indispensable party under F.R.Civ.P. 19.^{1/} The starting point of this inquiry is Rule 19(a) -- "Persons to be Joined if Feasible." Under that rule, the Court must, as a threshold determination, decide whether joinder would be desirable for a just adjudication of the action.

Without deciding the precise legal status of the status of the plaintiffs'

^{1/} Plaintiffs having filed a motion to join Petersen Enterprises, Inc. and Ruben Antonio as parties plaintiff, the only interest of plaintiffs' negotiating group unrepresented is that of the late Juan Carlos Villa.

business group, it is clear that the five members of the group were engaged in a joint venture for profit, each to share equally in any and all commissions of the venture. In contract actions in federal court "(j)oint obligees...usually have been held indispensable parties and their nonjoinder has led to a dismissal of the action." 7 Wright & Miller, Federal Practice and Procedure §1613 at p. 126 (1972). See, e.g., Harrell & Sumner Contracting Co. v. Peabody Peterson Co., 546 F2d 1227 (5th Cir. 1977); Republic Realty Mortgate Corp. v. Eagson Corp., 68 F.R.D. 218 (E.D. Pa. 1975). Moreover, in their brief in opposition to defendants' motion to dismiss, filed January 14, 1982, plaintiffs' now appear to concede that each of the living members of the group and the representative of the Villa interest, are parties who should be joined to this lawsuit. It is clear, therefore, that joinder of each

member of plaintiffs' group or their successor in interest, is desirable in this case.

Under Rule 19(a), if a person who should be joined hasnot been joined and his joinder is feasible, the court shall order that he be made a party. Petersen and Antonio have moved to join as plaintiffs in this lawsuit, therefore, an order by the Court that Petersen and Antonio be made parties is unnecessary. As to the representative of the Villa estate, however, such an order would be appropriate if joinder is feasible.

It is apparent that joinder of Villa's successor in interest, his minor daughter, Maria Florencia Villa de Aulet ("Maria"), is not feasible. Maria currently resides in Argentina, beyond the process and jurisdiction of this Court. Moreover, plaintiffs have been given a reasonable opportunity to add her as a party, having been

given numerous extentions of time based on counsel's representations to the Court that joinder was imminent.

In an effort to make joinder of the Villa interest feasible, plaintiffs have moved to appoint an associate of their local counsel, C. Thomas Williamson, III, as the guardian ad litem to act for Maria to the end that he may intervene in this action in a representative capacity as a party plaintiff. Plaintiffs argue that since the Court has the power to make a recalcitrant potential plaintiff an involuntary plaintiff, when that person is beyond the jurisdiction of the Court, it has the power to appoint a guardian ad litem for a non-resident minor who has a cause of action in this Court.

Plaintiffs' theory is fatally flawed in several respects. TFirst, there has been no determination that if Villa were still alive, the Court would make him an

involuntary plaintiff "in a proper case." The typical application of this procedure has been to allow exclusive licensees of patents and copyrights to make the owner of the monopoly an involuntary plaintiff in infringement suits. Wright & Miller, supra at §1606. Although the involuntary plaintiff doctrine has been applied by some courts to join persons other than exclusive licensees of patents or copyrights, the Court is satisfied that the instant action does not present a proper case for its application. See Rosen v. Rex Amusement Co., 14 F.R.D. 75 (D.D.C. 1952). As the Court of Appeals for the Fifth Circuit noted in Eikel v. State Marine Lines, Inc., 473 F.2d 959, 962 (5th Cir. 1973), "(t)he 'proper case' is meant to cover only those instances where the absent party has either a duty to allow the plaintiff to use his name in the action or some sort of an obligation to join plaintiff in the action."

Second, plaintiffs' motion completely ignores the Court's lack of in personam jurisdiction over Maria and the concomitant lack of power to appoint a guardian ad litem to act for her in this lawsuit. See Tryforos v. Icarian Development Co., S.A., 518 F.2d 1258 (7th Cir. 1975), cert. denied, 423 U.S. 1091 (1976).

Third, under Maryland law, to which this Court looks under Rule 17(b) to determine the capacity of guardians to sue for minors, see Vroon v. Templin, 278 F. 2d 345 (4th Cir. 1960), a guardian ad litem typically will not be appointed (in the absence of conflicting interest) when a general guardian already exists. See generally Gradman v. Gradman, 182 Md. 293, 303 (1943). F.R.Civ.P. 17(c) similarly conditions the appointment of a guardian ad litem on the absence of a general guardian. Sra. Aulet Garcia de Villa, as the surviving parent, is Maria's

general guardian under Maryland law. Md. Ann. Code, Art. 72A, §1. Moreover, in their motion to add an additional party as plaintiff filed on April 20, 1981, plaintiffs represented to the Court that Sra. Aulet Garcia de Villa had been appointed guardian of her daughter by an Argentine court. Plaintiffs' motion for appointment of a guardian ad litem will be denied.

In a further effort to make joinder of the Villa interest feasible, plaintiffs have moved for an order compelling John McCall, Jr. to acknowledge his signature before a notary public. Plaintiffs argue that such acknowledgement and authentication by the Argentine Consul is required by a children's court in Buenos Aires, Argentina before an order by that court permitting the minor daughter to appear through her mother as a plaintiff in this action will be entered. Defendants concede the authenticity of the letter in question, but

refuse to assume any burden regarding establishment of its authenticity.

Plaintiffs have not stated any reason why authentication by defendants is essential in this case. Specifically, they have not established why an authentication by the Clerk of the Court or by witnesses to the signing, options available to them since this lawsuit was filed, is inadequate. In the absence of such a showing there is no reason why the court should obligate defendants to assist plaintiffs in structuring their lawsuit.

Notwithstanding the fact that the representative of the Villa estates is a party that cannot be feasibly joined, plaintiffs argue that this suit should be allowed to proceed under Rule 19(b) :

(b) Determination by Court whenever Joinder not Feasible. If a person as described in subdivision (a) (1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or

should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

In discussing the first factor -- the extent to which a judgment entered in the person's absence might be prejudicial to him or those already parties -- and the second factor -- the extent to which prejudice can be lessened by protective provisions in the judgment -- plaintiffs propose the following: (1) plaintiffs will ask the Court to hold in trust one-fifth of any recovery for the benefit of the successor to the Villa interest and in the event the action does not result in a judgment favorable to plaintiffs the successor to the Villa interest will

be protected from any risk or loss as a result of this action; and (2) neither the widow of Villa nor his minor daughter have any knowledge of these transactions and the persons having such knowledge are parties or have asked to be made parties.

Without commenting on the protection plaintiffs' position afford to the holder of the Villa interest, it is clear that plaintiffs' proposal completely overlooks the prejudice that might result to defendants. As Professors Wright and Miller have notes, the emphasis on prejudice entails

both the need to protect absent persons from litigation that might adversely affect their interests in the subject matter of the action and the need to protect those who are parties from the threat of multiple actions, which would involve additional expense to the litigants and to the judicial system, and would increase the possibility of inconsistent determinations.

Wright & Miller, supra at § 1608, p. 67.

Similarly, in Potomac Electric Power Co.

v. Babcock & Wilcox Co., 54 F.R.D.486, 492 (D. Md. 1972), in granting defendants' motion to dismiss for lack of joinder of indispensable parties, Judge Harvey observed that "there is at the present time a risk that the (absent parties) could re-litigate the issues prosecuted here, or at a very minimum, require the defendants to come into another court and prove that principles of res judicata or collateral estoppel did apply in any subsequent action." The same risks are present in this case, yet plaintiffs' "solution" provides no adequate protection. Moreover, the representative of the Villa estate being beyond the jurisdictional reach of this Court, this is not a case where defendants would be in a position to bring in absent persons who could not be joined as original parties by means of defensive interpleader, or by using interpleader of asserting a counterclaim under Rule 13(h)

that falls within the ancillary jurisdiction of the Court. Wright & Miller, supra at § 1608, pp.74-75; see B. L. Schrader, Inc. v. Anderson Lumber Co., 257 F. Supp. 794 (D Md. 1966); MacBryde v. Burnett, 41 F. Supp. 661 (D Md. 1941).

With respect to the third factor -- whether a judgment rendered in the person's absence will be adequate -- the Court will assume, without deciding that any judgment rendered in the absence of the representative of the Villa estate would be adequate under the protective provisions proposed by plaintiffs.

As to the fourth factor -- whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder -- plaintiffs argue that if this case is dismissed they will have no adequate remedy anywhere for the recovery of damages against defendants, since service of defendants can only be obtained in the State of

Maryland. Assuming plaintiffs' position is correct, ^{2/} when a group of joint venturers of diverse nationalities attempt to enter a contract for the sale of products in international commerce, one of the assume hazards associated in such a relationship is that an action against the party obligated to the joint venture may not be maintained without joinder of all interested parties. See Rosen v. Rex Amusement Co., supra, 14 F.R.D. at 76. Plaintiffs voluntarily entered into this alleged business transaction and they cannot be heard to complain that one of the consequences of this course of dealing works a harsh result on them.

In determining whether "in equity

^{2/} The Court seriously doubts that service of companies shipping coal in inter-state and international commerce, as plaintiffs allege, can only be obtained in Maryland. Furthermore, it is possible that plaintiffs' claims are cognizable in the courts of Argentina or some other forum.

and good conscience; an action should proceed in the absence of a party who should but cannot be joined, the Supreme Court has commented that "(t)he decision whether to dismiss (i.e., the decision whether the person missing is 'indispensable') must be based on factors varying with the different cases, some such factors being substantive, some procedural, some compelling by themselves, and some subject to balancing against opposing interests." Provident Tradesmens Bank & Trust Co. v. Patterson, 390 U.S. 102, 118-19 (1968). Having weighed the Rule 19(b) factors and the other pragmatic considerations present in this case, the Court concludes that it cannot in equity and good conscience allow this action to proceed among the parties before it. Defendants' motion to dismiss will be granted. Since the proposed joinder of Petersen and Antonio will not achieve the complete joinder required

in this case, plaintiffs' motion to join Petersen and Antonio as parties plaintiff will be declared moot.

For the reasons stated herein, it is this 12th day of April, 1982, by the United States District Court for the District of Maryland,

ORDERED:

1. That plaintiffs' motion for appointment of a guardian ad litem is DENIED;
2. That plaintiffs' motion to compel authentication of a document is DENIED;
3. That defendant's motion to dismiss is GRANTED;
4. That plaintiffs' motion to add additional parties plaintiff is declared MOOT; and
5. That the Clerk will mail copies of the Memorandum and Order to all counsel of record.

/s/ Norman P. Ramsey

Norman P. Ramsey
UNITED STATES DISTRICT
JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

C. Dula Hawkins, et al.)
Plaintiffs)
vs.) Civil Action No.
JNO. McCall Coal Export Corp.) R- 80- 774
Et Al.)
Defendants.)
)

JUDGMENT

In accordance with the Memorandum and Order dated April 12, 1982, and filed in the above-entitled case, it is this 12th day of April , 1982.

ORDER AND ADJUDGED,

That judgment is entered in favor of defendants and against plaintiffs.

/s/ Norman P. Ramsey
Norman P. Ramsey

UNITED STATES DISTRICT
JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

C. DULA HAWKINS, ETC.)
Plaintiffs)
V.)
JNO. MCCALL COAL EXPORT CORP.,)
ET AL.,)
Defendants.)
)
)

Civil
Action
No.
R-80-774

PLAINTIFF'S MOTION TO ADD
ADDITIONAL PARTIES PLAINTIFF

Plaintiffs, through their undersigned counsel, hereby move this Court, pursuant to Rule 15(c) of the Federal Rules of Civil Procedure for an order granting permission to add Peterson Enterprises, Inc. and Ruben Antonio as parties plaintiff to this litigation.

The reasons in support of this motion are as follows:

1. Peterson Enterprises, Inc. and Ruben Antonio were participants in the effort of plaintiffs Hawkins, Hamrick and Juan Carlos Villa to secure shipments

from defendants of metallurgical coal
to Somisa in Argentina.

2. Peterson Enterprises, Inc. and
Ruben Antonio have previously assigned
their interest in the McCall contract to
plaintiff J. Nat Hamrick, Jr.

3. Defendants have raised ques-
tions about those assignments and this
has resulted in a substantial delay of
this litigation.

4. In order to expedite this
litigation and to remove any questions
about whether or not all necessary and
proper parties are before this Court,
Peterson Enterprises, Inc., Ruben
Antonio, and J. Nat Hamrick, Jr. have
agreed to terminate the assignments
which exist between them and Peterson
Enterprises, Inc. and Ruben Antonio
desire to join this action as parties
plaintiff.

WHEREFORE, Ruben Antonio and

Peterson Enterprises, Inc., through
their counsel, hereby move that they
be allowed to join this action as parties
plaintiff.

/s/ J. Nat Hamrick
J. Nat Hamrick
HAMRICK & HAMRICK
P.O. Drawer 470
Rutherfordton, NC 28139

/s/ Andrew Jay Graham
Andrew Jay Graham
KRAMON & GRAHAM, P.A.
Sun Life Building
Charles Center
Baltimore, MD 21201
(301) 752-6030

Attorneys for plaintiffs and
Ruben Antonio and Peterson
Enterprises, Inc.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

C. DULA HAWKINS, ET AL.,)
Plaintiffs)
V.)
JNO. MCCALL COAL EXPORT CORP) Civil
ET AL.,) Action
Defendants) No.
R-80-774)

)

ORDER

Upon consideration of the motion
by plaintiffs to add Ana Maria Aulet
Garcia de Villa, guardian for Maria
Florencia Villa Aulet, as a party plain-
tiff to this litigation, it is this 30th
day of July 1981, ORDERED that the motion
be, and the same hereby is, GRANTED.

/s/ Norman P. Ramsey
Norman P. Ramsey
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

C. DULA HAWKINS	*
J. NAT HAMRICK, JR.	*
Plaintiffs	*
	*
	*
V.	*
	*
JNO. MCCALL COAL EXPORT CORP.	Civil
JNO. MCCALL COAL COMPANY, INC.	Action
Defendants	No.
	*
	R-80-774

ORDER

In accordance with the views
expressed from the bench at the hearing
held in this case on December 15, 1980,
it is, this 28th day of May, 1981, by
the United States District Court for
the District of Maryland.

ORDERED, that the stay on all
discovery imposed by Order of this Court
on January 16, 1981, is hereby partially
lifted to permit defendants to resume
discovery concerning assignments of
rights in this litigation. This limited
discovery shall be completed within 60
days of the date of this Order. If,

however, additional time is needed by reason of problems caused by witnesses who are located outside the United States, counsel shall petition the Court for an extension of time. In all other respects, the stay of discovery is continued pending resolution of the defendants' motion to dismiss.

/s/ Norman P. Ramsey

Norman P. Ramsey
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

C. DULA HAWKINS, ET AL.,)	
PLAINTIFFS,)	
)	
V.)	Civil
JNO. MCCALL COAL EXPORT CORP,)	Action
ET. AL.,)	No.
DEFENDANTS.)	R-80-774
)	

PLAINTIFFS' MOTION TO ADD
ADDITIONAL PARTY AS PLAINTIFF

Plaintiffs, through their undersigned counsel, hereby move this Court, pursuant to Rule 15(c) of the Federal Rules of Civil Procedure, for an order granting permission to add Ana Maria Aulet Garcia de Villa, guardian for Marie Florencia Villa Aulet, as a party plaintiff to this litigation.

The reasons in support of this motion are as follows:

1. Juan Carlos Villa, a participant in the effort of plaintiffs Hawkins and Hamrick to secure shipments from defendants of metallurgical coal to

Somisa in Argentina, died in 1979.

2. Mr. Villa's daughter, Maria Florence Villa Aulet, is a minor and the sole heir of Mr. Villa's estate and entitled to share in whatever recovery may eventually be obtained by plaintiffs in this litigation.

3. Counsel for plaintiffs has been informed that Mr. Villa's former wife, Ana Maria Aulet Garcia de Villa, Sevilla 2940, 1425 Buenos Aires, Republic of Argentina, is the legal guardian of Mr. Villa's minor daughter. She has appointed the undersigned to represent in this litigation whatever interests in the litigation the late Mr. Villa had.

4. Thomas L. Crowe, counsel for defendants advises that he has no objection to this motion at this time.

For the foregoing reasons, plaintiffs respectfully request that the

motion be granted. A proposed order
is attached.

Respectfully submitted.

/s/ Robert A. Seefried
Robert A. Seefried
SEYMOUR & DUDLEY, CHARTERED
1901 L Street, NW
Suite 200
Washington, DC 20036
Counsel for Plaintiffs

April 17, 1981

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

C. DULA HAWKINS, *

AND *

J. NAT HAMRICK, JR. *

Plaintiffs *

v. *

JNO. MCCALL COAL EXPORT CORP. * K-80-774 *

AND *

JNO. MCCALL COAL CO., INC. *

Defendants. *

DEFENDANTS' MOTION FOR STAY OF
GENERAL DISCOVERY PENDING RESOLUTION
OF MOTION TO DISMISS

Come NOW the Defendants, Jno.

McCall Coal Export, Corp. and Jno.

McCall Coal Company, Inc., through coun-
sel, Cable, McDaniel, Bowie & Bond,
Morton A. Sacks and Thomas L. Crowe,
and move pursuant to Rule 8 of the Rules
of the United States District Court for
the District of Maryland, that pending

decision on the "Defendants' Motion to Dismiss Amended Complaint for Failure to Join Necessary and Indispensable Parties: ("Motion to Dismiss") all discovery be stayed except that which relates to the Motion to Dismiss. In support of this Motion, Defendants aver:

1. On November 3, 1980, Defendants filed their Motion to Dismiss, requesting that the Court dismiss Plaintiffs' Amended Complaint for failure to join necessary or indispensable parties or, in the alternative, that they be required to secure joinder of such parties.

2. At oral argument upon Defendants' Motion to Dismiss on December 15, 1980, the Court afforded Plaintiffs forty-five days or, until January 29, 1980, in which to secure an assignment from the successor in interest, under Argentine Law, of any interest the late Juan

Carlos Villa may have had in this litigation between Plaintiffs and Defendants, assignments previously having been obtained from one Ruben Antonio and one Roland Petersen, each of whom has had a relation to and interest in this litigation similar to that of the late Juan Carlos Villa.

3. At oral argument the Court indicated that if an assignment from Juan Carlos Villa was secured, or when it became apparent one could not be secured, the Court would after affording the Defendants discovery into the validity of any assignments secured by the Plaintiffs, rule upon the Defendants' Motion to Dismiss.

4. At the oral argument the Court also stated it would amend the Scheduling Order previously entered on September 18, 1980 to provide additional time for the parties to complete discovery because of the additional time required to

resolve Defendants' Motion to Dismiss.

5. Defendants have filed concurrently with this Motion, "Defendants' First Set of Interrogatories to Plaintiffs", and "Defendants' First Request for Production of Documents", which discovery is limited to the issue of the regularity under Rule 19 of the Federal Rules of Civil Procedure, of the assignments previously received by Plaintiffs from Messrs. Antonio and Petersen and the anticipated assignment from the successors in interest of the late Juan Carlos Villa.

6. Plaintiffs have filed "Plaintiffs' Second Request for Documents from Defendants", to which Defendants filed their Responses and Objections on December 3, 1980, but under which Plaintiffs have not yet inspected documents.

7. Defendants have noticed depositions of Dr James F. R. Sieper and

R. E. Perkinson, officers and employees of one of both of Defendants, and of third parties, the Chessie System, John S. Connor, Inc., Albert Knighton and Gordon Broadfoot, but none of said depositions has been taken, no dates having been set in some instances, and the depositions having been postponed in others.

8. Production of the documents which Defendants have agreed to produce if this case goes forward and attendance at the depositions will require additional time and expense on the part of the Defendants, which efforts and expenditures would otherwise be unnecessary if the assignments already secured are ineffective for the purpose of resisting Defendants' Motion to Dismiss or if no proper assignment of the decedent's partnership interest is acquired from the estate of Juan Carlos Villa. Moreover, such production and depositions will involve the otherwise

unnecessary disclosure of confidential material to persons who have claimed an ability to secure coal orders from one of Defendants' customers, to wit, Somisa, and who are therefore potential competitors or agents of such potential customers.

WHEREFORE, for the reasons stated above, the Court should order that, pending resolution of Defendants' Motion to Dismiss, all discovery be stayed except for discovery relevant to the Motion to Dismiss, such as "Defendants' First Set of Interrogatories to Plaintiffs'" and "Defendants' First Request for Production of Documents".

Respectfully submitted,

CABLE, McDANIEL, BOWIE & BOND

By /s/ Morton A. Sacks
Morton A. Sacks

/s/ Thomas L. Crowe
Thomas L. Crowe
900 Blaustein Building
Baltimore, Maryland 21201
(301) 752-3650
Attorney for Defendants

POINTS AND AUTHORITIES

Rule 6(b), Federal Rules of Civil Procedure.

Rule 8, Rules of the United States District Court for the District of Maryland.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 31st day of December, 1980, copies of the foregoing Defendants' Motion for Stay of General Discovery Pending Resolution of Motion to Dismiss and the proposed Order were mailed, postage prepaid to, Robert A. Seefried, Esquire, 1901 L. Street, NW, Suite 200, Washington, DC 20036 and Andrew Jay Graham, Esquire, Sun Life Building, Charles Center, Baltimore, Maryland 21201, Attorneys for Plaintiffs.

/s/ Thomas L. Crowe
Thomas L. Crowe

JNO. McCALL

COAL EXPORT CORP.

6177 Moravia Park Drive,
P.O. Box 9696
Baltimore, Maryland 21201

November 29, 1976

Mr. C. D. Hawkins
Box 1088
Marion, North Carolina 28752

Dear Mr. Hawkins:

We understand that you are in a position to secure some metallurgical coal export business through your various associates, and that these shipments would be for the Somisa steel group in Argentina (Sociedad Mixdad de Siderurgica).

Per our agreement today, any shipments made by this company or any of its associated companies to you or to your group, we will pay a commission of \$1.50 a gross ton. Said payment to be made to you or your designee within twenty-four hours after we receive full payment. We further agree that as long as you or your group continues the sale of our coals to Argentina we will not solicit direct business from Somisa.

It is understood that all terms and conditions of sales will be set by this company. If within a period of nine months you are unable to secure an order, this agreement may be cancelled by either

Mr. Hawkins
Page 2
November 29, 1976

party.

Very truly yours,

JNO. MCCALL COAL EXPORT CORPORATION

/s/ John M. McCall, Jr.
President

JMM/sr

Date NR
1980

Apr. 1 1 Complaint.

" " 2 Request of Plaintiff for Production of Documents.

" " 3 Notice of Plaintiff to take Deposition of Albert W. Nemenz.

" " 4 Notice of Plaintiff to take Deposition of John M. McCall Jr.

" " Magistrate Notice furnished to Attorney for Plaintiffs.

" " 5 Summons Issued. (cc and Magistrate Notice picked up by Attorney for Plaintiffs for Service pursuant to Local Rule 25). (Served: 4/15/80-See Paper 11)

" " 6. EX PARTE Motion of Plaintiffs for document retention order Affidavit and proposed order. (c/s)

" " 7 Interrogatories (FIRST SET) (21) of Plaintiffs propounded to Defendant.

Apr. 15 8 Response of Defendant in
Opposition to Ex Parte
Motion of Plaintiffs
for Document Retention Order
(2 c/s)

Apr. 28 9 Reply of Plaintiffs to Response
of Defendant in Opposition to
Plaintiffs' Ex Parte Motion for
Document Retention Order and
Exhibit A. (2 c/s)

May 2 10 Notice of Defendant to take
the Deposition of Plaintiff
J. Nat Hamrick Jr. and Speci-
fication of Documents. (2 c/s)

May 5 11 Affidavit of Service.

May 5 12 Stipulation re: Documents with
Approval of the Court (Kaufman,
J.) (C/M-5/6/80-1eh)

May 5 13 ANSWER AND Exhibit A.

June 4 14 Answers and objectives of
Plaintiffs to Defendant's
Request for Documents Attached
to Notice of Deposition of J.
Nat Hamrick, Jr. (2 c/s)

June 5 15 Answers and Objections of Defendant to Interrogatories (First Set) Propounded by Plaintiffs.

" " 16 Response of Defendant to Request of Plaintiffs for Production of Documents.

June 9 17 Scheduling Order (Kaufman J.) thereon. (c/m 6/10/80 leh)

June 16 18 Stipulation and Order (Young, J.) that Plaintiffs shall have to and including 10 days following the conclusion of the depositions of Mr. John McCall, Jr., Mr. Albert W. Nemenz and Mr. J.Nat Hamrick Jr., in which to file a motion to compel responses to Plaintiffs First Set of Interrogatories. (c/m-6/17/80-leh)

Aug. 12 19 Supplemental Answer of Plaintiffs' to Request of Defendant for Production of Documents Attached to Notice of Deposition of J. Nat Hamrick, Jr., and Attachments. (FILED SEPARATELY)

Aug. 13 20 Deposition of Plaintiff, J. Nat Hamrick, Jr., taken on behalf of Defendant on July 25, 1980. (FILED SEPARATELY) (No Exhibit Received)

Aug. 25 21 Appearance of Robert A. Seefried, Esquire as Attorney for Plaintiffs and J.Nat Hamrick, Esquire, as of Counsel for the Plaintiffs.

Aug. 26 22 Memorandum (Kaufman,J.) requesting a Status Report re: Discovery Matters on or before September 5, 1980. (c/m-8/26/80-bw)

Sept. 1 23 Memorandum (Kaufman,J.) requesting Counsel to confer and to complete the attached Scheduling Order and return same to the Court on or before September 15, 1980. (c/m-9/3/80-leh)

Sept. 16 24 Letter/Notation (Kaufman,
J) re: Scheduling Order and
Filing of an Amended Complaint.
(c/m-9/18/80-leh)

Sept. 18 25 Scheduling Order (Kaufman,J.)
thereon. (c/m-9/18/80-leh)

Oct. 9 26 Motion of Plaintiffs for Leave
to File and Amended Complaint.
Memorandum, and Proposed Order.
(2 c/s)

Oct. 13 27 Order (Kaufman,J.) Granting
Motion of Plaintiff for Leave
to File Amended Complaint un-
less Defendant shows cause in
writing to the contrary, on
or before October 24, 1980.
(c/m-10/14/80-leh)

Oct. 14 28 Letter dated October 13, 1980
to Court from Counsel for
Defendants advising they have
no objection to the filing of
the Amended Complaint and
that they will be filing a
response to the Amended
Complaint on or before

Oct. 14 28 October 30, 1980 with
APPROVAL of the Court
(Kaufman,J.) thereon.
(c/m-10/15/80-leh)

" " 29 AMENDED COMPLAINT AND REQUEST
FOR JURY TRIAL.

Oct. 21 30 Letter Dated October 20, 1980
to Clerk from counsel for
Defendant, Jno.McCall Coal
Corp., advising they re-
present the added party
defendant, Jno.McCall Coal
Company, Inc., and have
accepted service of the
Amended Complaint on behalf
of said added party defendant.

Oct. 29 31 Supplemental Answer. Plaintiff
to Request of Defendants for
Production of Documents.

Oct. 31 32 Deposition of Plaintiff, J.
Nat Hamrick, Jr. taken on
August 25, 26, 27, and 28, 1980.
(Four Volumes) (Filed Separately)

Oct. 31 32a Deposition of John McCall,
Taken on Sept. 15, 1980, (filed
Separately)

Oct. 31 33 Deposition of John McCall,
taken on August 28 and 29,
1980 and September 3, 1980
(THREE VOLUMES) (FILED SEP-
ARATELY)

Oct. " 34 Deposition of Plaintiff,
C.Dula Hawkins, taken on
September 24 and 25, 1980
(TWO VOLUMES) (FILED SEPARATELY)

Nov. 3 35 Motion of Defendants to Dismiss
AMENDED Complaint, Memorandum,
Exhibit A, and Request for
Hearing. (c/s) and Exhibit B.

Nov. 4 36 Request (SECOND) of Plaintiff
for Production of Documents
and Exhibit A. (c/s)

Nov. " 37 Notice of Plaintiffs to take
Deposition of Dr. James
F.R. Sieper and R.E. Perkinson
and Request for Production of
Documents. (c/s)

Nov. " 38 Notice of Plaintiffs to take
Deposition of Melanie Lawson
and James J. Sidebotham (c/s)

Nov. 13 39 Notices (2) of Plaintiffs to take Depositions of the Chessie System and John S. Connor, Inc., on December 1, 1980, and Request for Production of Documents.

Nov. " 40 Notices (2) of Plaintiffs to take Depositions of Albert Knighton, John S. Connor, Inc. and Gordon Broadfoot, John S. Connor, Inc. on December 3, 1980.

Nov. 20 41 Motion and Order (Ramsey, J.) extending the time within which Plaintiff may file brief to and including November 25, 1980. (c/m 11/10/80 C1)

Nov. 25 42 Memorandum of Plaintiff in opposition to Motion of Defendants to Dismiss Amended Complaint and Exhibits A and B. (c/s) and Additional Exhibit received 12/12/80. (c/s)

Dec. 3 43 Response and Objections of Defendants to Request (Second)

Dec. 3 43 of Plaintiff for Production
of Documents and Affidavit
of Albert W. Nemenz. (c/s)

" 8 44 Reply Memorandum of Defendants
to Motion of said Defendants
to Dismiss. (c/s)

" 15 Hearing on Motion of Defendants
to Dismiss held before Ramsey, J.

" 15 Robert A. Seefried, Esquire
moved and admitted PRO HAC VICE

" 15 Argued and Held Sub-curia.

1981

Jan. 5 45 Interrogatories (10) of Defendants
propounded to Plaintiffs.

" " 46 Motion of Defendants for Stay
of Discovery, Points and Auth-
orities, and Proposed Order.
(c/s)

" " 47 Request of Defendants for Pro-
duction of Documents.

" 12 48 Memorandum of Plaintiffs in
Opposition to Motion of De-
fendants for Stay of Discovery (c/s)

Jan. 16 49 Order (Ramsey,J.) "Staying" Discovery pending ruling on Motion of Defendants to Dismiss. (C/M 1/16/81 Clk)

Feb. 5 50 Answer and Objection of Plaintiffs to Interrogatories propounded by Defendants. (c/s)

" " 51. Response to Plaintiffs to Request of Defendants for Production of Documents. (c/s)

Apr. 20 52 Motion of Plaintiffs to Add Ana Maria Garcia de Villa, guardian for Maria Florencia Villa Aulet as party plaintiff and proposed Order. (c/s)

" 22 53 Motion of Defendants for Reconsideration of Order entered January 16, 1981 Exhibits A and B, and proposed Order. C/S

May 1 54 Reponse of Plaintiffs to Motion of Defendants for Reconsideration of Order entered January 16, 1981. (c/s)

" 4 55 Supplemental Responses of Plaintiff to Defendants' First Set of Interrogatories. and Affidavit (Received 5/12/81) (c/s)

May 12 56 Motion and Order (Ramsey,J.)
"STRIKING" Sally A. Regal,
Esquire, as counsel for
Plaintiffs. (C/M 5/12/81 Clk)

" 22 57 Supplemental Response of
Plaintiffs to Interrogatories
(FIRST SET) propounded by
Defendants.

" 29 58 Order (Ramsey,J.) dated May
28, 1981, "GRANTING" in part,
Motion of Defendant for Recon-
sideration of Order entered
January 16, 1981 and that limited
discovery be completed within
60 days from this date as therein
more particularly set forth.
(c/m 5-29-81 Clk)

June 3 59 Notice of Defendants to take
Deposition of Plaintiffs and
R. Petersen and R.Antonio,
Request for Production of
Documents, and Attachment.
(c/s)

" 11 60 Motion of Defendants to Compel
Answers to Interrogatories and
Local Rule 34 Statement. (c/s)

June 23 61 Motion and Order (Ramsey,J.)
extending the time within which
Plaintiffs may file a respond
to Motion of Defendants to
Compel Answer to Interroga-
tories, to and including
July 7, 1981. (C/M 6/24/81
Clk)

July 8 62 Opposition of Plaintiff to
Motion of Defendant to Compel
Answers to Interrogatories
and Proposed Order. (c/s)

" 23 63 Motion and Order (Ramsey,J.)
dated July 16, 1981, extending
the time within which to com-
plete discovery, to and in-
cluding September 15,1981.
(c/m 7-17-81 Clk)

" " 64 Memorandum and Order (Ramsey
J.) dated July 20,1981,
"DENYING" Motion of Defendants
to Compel Answer to Interro-
gatories No. 5, and "GRANTING"
in part and "DENYING" in part
to Compel Answer to Interrogatory
No. 6. (c/m 7-22-81 Clk)

July 31 65 Order (Ramsey,J.)
dated July 30, 1981,
"GRANTING" Motion of
Plaintiffs to add Ana Maria
Aulet Garcia DeVilla, guardian
for Maria Florencia Villa
Aulet, as party plaintiff
(C/M 7/31/81 C1k)

" " 66 Request of Defendants,
(dated July 28, 1981)
to Plaintiff, J.Nat Hamrick
for Production of Documents.

" " 67 Notices of Defendants, (dated
July 30, 1981) to take Depos-
tions of Ruben Antonia and
Roland Petersen and Request
for Production of Documents.

" " 68 Answers Hearing submitted by
Ana Maria Aulet Garcia to an
Argentina Judge, and Attach-
ments.

Aug 21 69 Notice and Order (Jones,J)
withdrawing Robert A. Seefried
Seymour, Seefried & Hoffman
Chartered as counsel for Plaintiff
(C/M 8/25/81-mbm)

Sept.21 70 Motion and Order (Ramsey,J.)

Sept. 21 70 extending the time within
which discovery, RE: Interest
may be completed, and to and
including November 2, 1981.
(c/m 9-18-81 Clk)

Nov 30 71 Appearance of J.Nat Hamrick
Esquire, as co-counsel on
behalf of Plaintiff.

" " 72 Motion of Plaintiffs to Add
PETERSON ENTERPRISES AND
RUBEN ANTONIA, as Party
Plaintiffs. (c/s)

Dec. 8 73 Response of Defendants to
Motion of Plaintiffs to add
Party Plaintiff (c/s)

" 15 74 Motion of Plaintiff to
appoint Guardian and Pro-
posed Order.(c/s)

1982

Jan 13 75 Response of Defendants to
Compel Authentication of
Documents. (c/s)

" " 76 Opposition of Defendants to
Motion of Plaintiffs to Appoint
Guardian Ad Litem. (c/s)

Jan 14 77 Opposition of Plaintiffs
to Motion of Defendants to
Dismiss, and in Support
of Motion to add Party Plaintiffs
and Attachments. (c/s)

" 20 78 Reply of Defendants to
Opposition of Plaintiffs
to Motion of Defendants
to Dismiss, and in support
of Motion to add Party
Plaintiffs. (c/S)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

C. DULA HAWKINS, and
J. NAT HAMRICK, JR.
Plaintiffs.
vs.

Civil Action
No.
R- 80- 774

JNO. McCALL COAL EXPORT CORP. and
JNO. McCALL COAL COMPANY, INC.
Defendants.

MOTION TO APPOINT GUARDIAN

Now comes J. Nat Hamrick, counsel for plaintiffs,
and respectfully shows to the Court:

-1-

That Maria Florencia Villa de Aulet is
an infant residing in Argentina and sole
heir of Juan Carlos Villa.

-2 -

That this action was brought by C.
Dula Hawkins and J. Nat Hamrick, Jr.,
plaintiffs, against the defendants to re-
cover damages for breech of contract as
set forth in this complaint.

-3-

That the father of the minor, Maria
Florencia Villa de Aulet, was one Juan Carlos
Villa, who had a claim against the defen-
dants identical to the claim of the named
plaintiffs herein.

-4-

That one Juan Carlos Villa is deceased and Maria Florencia Villa de Aulet is his sole heir and is a minor residing in Buenos Aires, Argentina.

-5-

That the said Maria Florencia Villa de Aulet has no general guardian and has no way to proceed to ascertain her claim as heir of her father, against the defendants herein except by guardian ad litem duly appointed by this Court to act for her.

-6-

That plaintiffs are now attempting to have a general guardian appointed for her to act in this matter in the courts of Argentina, the country of her residence.

That, however, this effort has not been completed due in part to the refusal of the defendants to authenticate a letter written by Jno. McCall to the end that said letter may be transmitted together with the pleadings to the courts of Argentina.

-7-

That, however, this court has directed that all persons having an interest in this litigation as plaintiffs be made parties plaintiff by December 15, 1981.

-8-

That counsel for the plaintiffs feels that it will be impossible to complete the proceedings before the Argentine court by that time.

and therefore counsel for the plaintiffs

-76-

respectfully moves this Court that C. Thomas Williamson, III, Esq. whose address is c/o Kramon & Graham, P.A., Sun Life Building, Charles Center, Baltimore, Maryland 21201, a competent and responsible person, a member of the bar of this Court and fully competent to understand and protect the rights of Maria Florencia Villa de Aulet should be appointed guardian ad litem for her to the end that he may intervene in this action as a party plaintiff. He has no interest adverse to those of Maria Florencia Villa de Aulet, is not connected in his business with the adverse party, and is of sufficient ability to answer to Maria Florencia Villa de Aulet for any damages which may be sustained by negligence or misconduct of the said C. Thomas Williamson, III in the prosecution of said suit.

That said C. Thomas Williamson, III, Esq. is willing to act as guardian ad litem for Maria Florencia Villa de Aulet as appears by his consent attached hereto.

WHEREFOR plaintiffs move the Court for an order appointing C. Thomas Williamson, III, Esq. as guardian ad litem for the purpose of intervening in this action as a party plaintiff until such time as a general guardian can be appointed for her by the courts of Argentina.

This 15th day of December, 1981.

/s/ J. Nat Hamrick
J. Nat Hamrick
Attorney for Petitioner
PO Drawer 470
Rutherfordton, NC 28139
(704) 287-3359

/s/ Andrew Jay Graham

Andrew Jay Graham - Attorney
for Petitioner
Sun Life Building
Charles Center
Baltimore, Maryland 21201

I, C. Thomas Williamson, III, am willing
to act as guardian ad litem for Maria Flor-
encia Villa de Aulet, the sole heir of one
Juan Carlos Villa's estate and to protect
her interest as a named plaintiff in
the above action.

This 15th day of December, 1981.

/s/ C. Thomas Williamson

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

C. DULA HAWKINS, et. al.,
Plaintiffs.

vs.

JNO. MCCALL COAL EXPORT
CORP., et. al.,

MOTION TO
COMPEL
R-80-774

Defendants.

NOW COME Plaintiffs through their
counsel and respectfully show to the Court:

-1-

That they ahve filed motions and submitted orders to join all necessary parties to this actionwith the exception of the minor daughter of Commodore Villa.

-2-

That Plaintiffs' counsel has been advised that in order to join the minor daughter of Commodore Villa it is necessary that a letter written by Jno. McCall, signed by Jno. McCall, which is a party of and attached to the pleadings, be acknowledged by a Notary Public and authenticated by the Argentine Consul. Copy of said letter is attached and marked Exhibit A.

-3-

That Plaintiffs' counsel is advised that once hthis has been done and the authenticated pleadings in this case together

with the letter have been forwarded to the proper children's court in Buenos Aires, Argentina an order will be entered permitting the minor daughter to appear through her mother as a plaintiff in this action.

-4-

Defendants have declined to have Jno. McCall acknowledge his signature before a Notary Public so that said letter may be authenticated by the Argentine Consul and sent to the proper court in Argentine.

-5-

Plaintiffs feel that the position of the Defendants in this matter is inconsistent in that on the one hand that they insist she be made a party and on the other hand they refuse to take a simple step to authenticate the letter in order that she may be made a party.

-6-

In order to accomplish this desired end Plaintiffs feel that the Defendants should be compelled to authenticate the signature of Mr. Jno. McCall to the end that the permission of the Argentine Court can be obtained for the joinder of Commodore Villa's daughter, or in the alternative that their motion to join the minor daughter of Commodore Villa be denied.

PLAINTIFF THEREFORE move the Court:

-80-

1. That an order be entered requiring Jno. McCall to acknowledge his signature before a Notary Public, or, in the alternative;
2. That defendants' motion to join the minor daughter of Commodore Villa be denied.

/s/ J. Nat Hamrick

J. Nat Hamrick
Attorney for Plaintiffs
PO Drawer 470
Rutherfordton, NC 28139
704-287-3359

/s/ Andrew Jay Graham
Andrew Jay Graham
Attorney for Plaintiffs-
Local Counsel
Sun Life Building, Charles
Center
Baltimore, Maryland 21201
301-752-6030

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